

1 talking; not because he was afraid that if he didn't
2 talk, he would have to do time in Fort Lauderdale and
3 also down in Miami. He even says in his taped statement,
4 which the Court heard today, that he knew the law, is
5 what he said, and he took the law in his own hands.
6 The reason he took the law in his own hands, because the
7 police and the cops were not doing their job in getting
8 the prostitutes off the street, so he indicates there
9 that he knows what the law is.

10 Furthermore, he says in the statements on several
11 occasions that he has these rights memorized, is
12 exactly what the testimony was. So I think if you
13 consider all the statements, that there is no promises
14 and there is no inducements at all. That's all I have
15 to say. Thank you.

16 THE COURT: All right, thank you. Well, as to
17 point one - and I'll read your points, Mr. Zeidwig,
18 because they're a little more thorough or not more
19 thorough but perhaps made out a little bit better than
20 the State's where the defendant has been psychologically
21 characterized as retarded with organic brain damage
22 and mental age level of a child between the ages of
23 eight and ten could knowingly and intelligently waive
24 his Miranda rights and render a full confession to
25 police officers. Your issue is strained thusly,

1 Mr. Hancock, whereas the defendant's rights were
2 promised, given to him and if they were, was he
3 competent to understand them?

4 Well, the testimony as I heard it, at least
5 between the psychologist and the psychiatrist, which
6 was completely opposite, was to me - I could not
7 reconcile that testimony; and if I could not reconcile
8 it because one group said one thing and another group
9 said another thing from exactly the same set of
10 circumstances, as I tell the jury, my job then is
11 to believe part of it, not believe part of it or reject
12 it all.

13 I don't think I can reject it all, but the
14 credibility of it is rather low and the believability
15 of it just as low, so that I had to really look
16 elsewhere for my decision.

17 The testimony really almost was a testimony of
18 convenience and I know that's - and I know that's
19 putting it pretty hard, but I don't know how else to
20 understand that testimony. It was just too different
21 as to being on the same kind of set of tracks, one on
22 one track and one on the other and neither one wavered
23 within one inch. So I put most of that aside.

24 I find that Mr. Townsend was sufficiently societally,
25 if I may use that word, and functionally intelligent to

1 know - to know his Miranda rights and to significantly
2 and sufficiently waive them and I use the words
3 "knowingly" and "intelligently" in the sense that he
4 would knowingly and intelligently waive them and that
5 would be in the street parlance. I think he
6 understands what went on. I can't conceive of him
7 functioning at a level of seven, six, which is a
8 pretty good societal level, according to the experts,
9 and that part of the testimony I was ready to accept
10 and the implausible testimony that he didn't know
11 simple statements being read to him when he had so
12 much knowledge of street parlance.

13 So, accordingly, I find that he did knowingly
14 understand the Miranda rights and knowingly and
15 intelligently for legal purposes waived those rights
16 in making his confession to the police.

17 The other question is very much closer, point two,
18 reading from yours first, assuming defendant did have
19 the mental capacity to waive the Miranda rights and
20 give a full confession, the question presented becomes
21 whether statements made to defendant during interrogation
22 by police officers tainted with words of promise and
23 reward deluded the defendant as to his true position and
24 exerted such undue influence over his mind to render
25 such confession as having been illegally obtained and

1 inadmissible; and your point to that, Mr. Hancock,
2 was the defendant's rights were given to him and he
3 understood them. You know, it would be good if all
4 confessions were perfect. I have yet to see a perfect
5 confession, but I've not been in the criminal area that
6 long. I don't know if there is such a thing. This
7 confession, although I would rather not have read what
8 you call promises and inducements in that confession -
9 it would have been better without it; let me put it
10 that way - from the State's point of view, better, of
11 course, from your point of view, but I think you have
12 a real peg to hang your hat on anyway. I find that
13 the confession even with that was voluntarily made
14 and that if you took those to the point where you said
15 to yourself, well, would he or would he have not gone
16 forward had those statements not been made, I come
17 to the conclusion that he would have. I don't think
18 that those statements made a confession that was
19 admissible inadmissible.

20 So accordingly I conclude that the confession was
21 voluntarily, knowingly and intelligently made. All
22 right.

23 What posture are we now, gentlemen?

24 MR. ZEIDWIG: Your Honor, we have about ten other
25 pending motions, one of which is a motion in limine where